

**AN ORDINANCE (1) AMENDING AND SUPPLEMENTING CHAPTER 345 (ZONING) OF THE  
MUNICIPAL CODE TO ADD ARTICLE IX (INCLUSIONARY ZONING) REQUIRING THE INCLUSION OF  
AFFORDABLE HOUSING UNITS IN ALL DEVELOPMENT PROJECTS WITH RESIDENTIAL WHICH  
HAVE RECEIVED USE VARIANCES OR INCREASED DENSITY OR HEIGHT**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, a purpose of the MLUL, at N.J.S.A. 40:55D-2.a, is to encourage municipal action to guide the appropriate use or development of all lands in this state in a manner which will promote the public health, safety, morals, and general welfare; and

**WHEREAS**, a purpose of the MLUL, at N.J.S.A. 40:55D-2.e, is to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; and

**WHEREAS**, the City of Jersey City has adopted a Housing Element, as per NJSA 52:27D-311, the “municipality may provide for its fair share and low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share”; and

**WHEREAS**, the Municipal Council of the City of Jersey City wishes to ensure that as the City grows and attracts market-rate residential development that it also provides opportunity for the City to meet its resident’s, current and future, affordable housing needs; and

**WHEREAS**, an inclusionary ordinance with incentives and requiring a mandatory set-aside of affordable housing on-site is an effective and fair means of encouraging and ensuring the production of affordable housing by private sector developers recognized by the Supreme Court in *So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp.*, 92 N.J. 158 (“Mt. Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

**WHEREAS**, nearly 40% of Jersey City’s households are cost-burdened, defined by HUD as paying more than 30% of one’s income towards housing, combined with housing values increasing at a much faster rate than income creates difficulties for families paying for other necessities such as food, clothing, transportation and medical care; and

**WHEREAS**, according the American Community Survey, the population in Jersey City from 2010 to 2017 increased by 7%, or an additional 18,335 residents; and

**WHEREAS**, the percentage change from 2010 to 2016 for residents who are below poverty level increased by 19%. In that same time frame, the population 65 and over who are below poverty level increased by 32%, and the population under 18 years old determined to be below poverty level increased by 13%; and

**WHEREAS**, according to the 2016 American Community Survey 45% of renters in Jersey City used more than 30% of their household income to pay rent, that represents a 15% increase from 2010; and

**WHEREAS**, according to the 2016 American Community Survey, 32% of all homeowners without a mortgage were paying more than 30% of their monthly income on housing; and

**WHEREAS**, increases in permitted residential density or floor area ratio ("FAR"), accompanied by a mandatory set-aside of affordable housing, constitute incentives to private developers and compensatory benefits as required by the Fair Housing Act, N.J.S.A. 52:27D-311.h.; and

**WHEREAS**, amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Plan, N.J.S.A. 40A.12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses shall require a mandatory set-aside of affordable housing constitute a compensatory benefit for inclusionary development.

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City, that Chapter 345 (Zoning) of the Municipal Code be amended to read as follows:

## **ARTICLE 345 ZONING**

### **Article I through Article VIII**

NO CHANGE.

## Article IX Inclusionary Zoning

### **§ 345-78. - Purpose.**

The purpose of this ordinance is to create mixed-income housing through new construction to assist the City in promoting the creation of Inclusionary Developments and Affordable Housing as the City grows and attracts new market-rate residential development.

### **§ 345-79. – Definitions for Inclusionary Zoning**

The following terms, when used in this Article, shall have the following definitions:

**AFFORDABLE HOUSING** - means residential housing, which is restricted for occupancy by households whose combined annual income for all members does not exceed 120 percent of the median income. This term shall refer to the broad classification, and not be confused with more specific terms that define different income divisions.

**“HUD”** – means the United States Department of Housing and Urban Development

**INCLUSIONARY DEVELOPMENT** means a development containing both affordable and market rate units.

**LOW-INCOME HOUSEHOLD** means a household in which the combined total annual income for all members of a household, that does not exceed 50 percent of the average median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

**LOW-INCOME UNIT** means a restricted unit that is affordable to a low-income household.

**MARKET-RATE UNITS** mean housing not restricted to low-, moderate-income and workforce households that may sell or rent at any price.

**MEDIAN INCOME** means the median income by household size for Hudson county, as adopted by HUD income requirements by ordinance by the City Council.

**MODERATE-INCOME HOUSEHOLD** means a household in which the combined total annual income for all members of a household is not less than 50 percent and does not exceed 80 percent of the median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

**MODERATE-INCOME UNIT** means a restricted unit that is affordable to a moderate-income household.

**REDEVELOPMENT PLAN** means a plan adopted by the governing body of the City of Jersey City for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.

**RESIDENTIAL** means any real property and the improvements, buildings, structures or house thereon, whether single or multi-family, whether or not owner occupied, used for residential purposes.

**RESTRICTED UNIT** means a dwelling unit, whether a rental unit or ownership unit, that is subject to affordability controls.

**VERY LOW-INCOME HOUSEHOLD** means a household in which the combined total annual income for all members of a household does not exceed 30 percent of the median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

**VERY LOW INCOME UNIT** means a restricted unit that is affordable to a very low- income household.

**WORKFORCE HOUSEHOLD** means a household in which the combined total annual income for all members of a household is not less than 80 percent and does not exceed 120 percent of the median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year

**WORKFORCE UNIT** means a restricted unit that is affordable to a workforce-income household.

**§ 345-80. - Mandatory Set-Aside.**

**A. Applicability**

1. After the effective date of this Article, compliance with this Article is required for all properties/developments with a residential component that are requesting an additional 5 units or 5,000 square feet of additional residential floor area, whichever is less, beyond the permitted existing zoning through a variance pursuant to NJSA 40:55D-70.c., NJSA 40:55D-70.d or a Redevelopment Plan Amendment.

**B. Exemptions**

1. Developments of 30 units or less.
2. Any project which is to be undertaken by the Jersey City Housing Authority.
3. Rezoning initiated by the City as a result of a Master Plan Update or Amendment

**C. Inclusionary Housing Set-Aside**

1. Applicable developments shall set aside not less than twenty percent (20%) of the total number (permitted plus additional) of residential units, as identified in Section A. herein, as affordable housing. This requirement shall apply to both rental units and all forms of ownership. All affordable units shall be consistent with Chapter 188 of the Jersey City Code.
2. The 20% set aside shall be provided on-site in accordance with the following:
  - i) No less than 5% shall be low-income units
  - ii) No less than 5% shall be moderate-income units
  - iii) No more than 10% be workforce housing units
  - iv) No more than 35% shall be studio and 1-bedroom units
  - v) All inclusionary units shall be required to be income restricted for a minimum of 30 years
3. Rounding. When any calculation of the mandatory set aside results in a fractional income-restricted unit, the fraction shall be rounded up to the next whole unit.

**D. Approving Authority**

All Inclusionary Zoning applications shall be reviewed and approved by the Director of the Office of Affordable Housing, the Director of Housing, Economic Development and Commerce (HEDC), or their designee, and the Director of Community Development. In the instance the application

is in a Redevelopment Plan area, the Jersey City Redevelopment Agency shall also be one of the bodies who review and approve Inclusionary Zoning Applications.

- E. The required Affordable Housing units shall be constructed on-site and integrated with the market rate units unless granted relief by the approving authority.
- F. All Inclusionary Zoning applications will be formalized with an Affordable Housing Agreement, as required in Chapter 188 of the Jersey City Code. The Affordable Housing Agreement shall be a requirement to be included in any Planning or Zoning Board application that triggers the Inclusionary Housing Mandatory Set-Aside.

**§ 345-81. – Off-site Affordable Units in Lieu of On-Site Affordable Units**

The approving authority may permit the creation of off-site affordable units for some or all the obligation in accordance with the following:

- i) The developer/applicant shall pay \$5,000 to the City of Jersey City to cover the administrative fees required for the fiscal analysis study to determine how the proposed off-site affordable housing units compares in value to the required on-site affordable housing units.
- ii) Off-site affordable housing units are within the same Ward as the development.
- iii) The off-site location is available, approvable, developable, and will NOT require a variance for density, F.A.R., or height.
- iv) The specific location for the off-site units is provided at the time of request for such approval.
- v) Off-site units shall be developed either prior to or simultaneously with on-site market rate units.
- vi) The off-site affordable units shall meet all applicable requirements of the Jersey City Code Chapter 188.

**§ 345-82. - Payment In Lieu of Creating Affordable Housing Units**

- A. At the discretion of the approving authority, a developer may provide a payment in lieu of constructing the affordable housing obligation into the City of Jersey City's Affordable Housing Trust Fund. The opportunity to provide a payment in lieu of constructing on-site affordable housing units is not intended to be and should not be construed as a right available to developers at their sole option. The policy of this Article favors construction of on-site affordable units.
- B. The developer/applicant shall pay \$5,000 to the City of Jersey City to cover the administrative fees required for a fiscal analysis study to determine whether the proposal can absorb the on-site affordable requirement through the potential gain in land value resulting from increased units.
- C. The applicant shall demonstrate to the approving authority that the development of on-site affordable units is not feasible or not needed. The approving authority should consider the following metrics when determining if an application should be allowed to use the payment in lieu option. This list is not exhaustive; the approving authority can take into consideration any other relevant factors when making a determination.
  - 1. The site is in a designated Opportunity Zone.
  - 2. The site is more than a 1-mile radius outside of any existing or proposed light rail, PATH station, or Bus Rapid Transit stops.
  - 3. The site is in a census tract that already has a majority of units (50% or more) available where the median income of a family with 4 individuals can afford to live without paying more than 30% of their monthly income on housing costs.
  - 4. The amount of on-site units the developer proposes that are designated for households at or below 30% of the area median income for a minimum of 20 years. For example, if the project proposes only 10% on-site but all or most of those units are reserved for households at 30% AMI or lower; it should be looked at more favorably to allow the remaining 10% set aside to be a payment in lieu.
  - 5. In no instance shall the on-site affordable units be less than 5% of the total development.
- D. The amount of the payment-in-lieu figure shall be based upon a tiered payment-in-lieu system that shall increase 2% every year from the year this ordinance was adopted. The boundaries of the tiered areas shall be established on the map entitled "INCLUSIONARY ZONING: Payment in

Lieu of Creating Affordable Housing.” The Division shall update this map annually to properly represent current housing characteristics. The map shall be on file and available for public inspection with the Division of Affordable Housing. There shall be no instance where the payment in lieu is any less than what is listed within the below requirements (including any annual increases):

1. Tier 1 shall pay \$25,000 a unit
  2. Tier 2 shall pay \$35,000 a unit
  3. Tier 3 shall pay \$50,000 a unit
  4. Tier 4 shall pay \$75,000 a unit
  5. Tier 5 shall pay \$100,000 a unit
- E. The approval of any payment in lieu benefit shall be conditioned upon the developer and the City entering into a developer’s agreement that details the manner in which the contribution will be fulfilled. That developer’s agreement shall also be made a part of the Required Affordable Housing Agreement, required in 345-84 Compliance.

**§ 345-83. – Community Benefits in lieu of Creating Affordable Housing Units**

- A. A reduction in the mandatory on-site Affordable Housing requirement may be considered relative to the value of community benefits proposed by the developer.
- a. The developer/applicant shall pay \$5,000 to the City of Jersey City to cover the administrative fees required for the fiscal analysis study to determine the value of the proposed community benefit in comparison to the gain in land value resulting from the zone change.
  - b. The City of Jersey City shall only accept community benefits in the case of a redevelopment plan amendment and acceptance of said community benefit shall be at the discretion of the Mayor or their designee, the Jersey City Redevelopment Agency, and the City Council.
  - c. Eligible community benefits may consist of, but are not limited to, the following: construction of a public facility, such as, but not limited to, public schools, public recreational facilities, government offices, fire stations, police stations, public parking garages, public transportation systems or facilities, roads and water infrastructure, etc.
- B. The approval of any community benefit shall be conditioned upon the developer and the City entering into a redevelopment agreement that details the manner in which the contribution will



be fulfilled. That redevelopment agreement shall also be made a part of the Required Affordable Housing Agreement, required in 345-84 Compliance.

**§ 345-84. - Compliance**

- A. Inclusionary housing units and developments containing one or more affordable housing unit(s) shall meet all applicable requirements of the Jersey City Code Chapter 188.
- B. Developers shall submit an Affordable Housing Agreement outlined within Chapter 188 of the Jersey City Code to the satisfaction of the Office of Affordable Housing Compliance.
- C. Developers shall be required to comply with the “Duties of the Developer” as outlined in Chapter 188 of the Jersey City Code to the satisfaction of the Office of Affordable Housing Compliance.
- D. Developers shall comply with eligibility determination procedures by providing adequate documentation as set forth within Chapter 188 to the satisfaction of the Office of Affordable Housing Compliance.
- E. The Office of Housing Compliance shall be responsible for monitoring compliance and recordkeeping for all Affordable Housing Agreements produced as a result of this Article.

**§ 345-85. – Violation, default and remedies**

Upon a violation of any of the provisions of the affordable housing agreement, the Director of Affordable Housing shall give written notice to the developer specifying the nature of the violation and require corrective action within a reasonable period of time as set forth in Chapter 188. If the developer does not reply or correct the violation within the time specified, the developer shall, for each and every violation, be fined up to a maximum of \$2,000 a day that such violation continues after such notice.

**§ 345-86. - Severability.**

If any Section, Subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.